

REMARKS

Upon entry of the present amendment, claims 1-5 will remain pending in the above-identified application and stand ready for further action on the merits.

The amendments made herein to the claims of this application do not incorporate new matter into the application as originally filed. In this respect, the amendments have been made in an effort to overcome the various concerns set forth by the Examiner in the outstanding Office Action regarding Applicants' duties under 35 USC § 112, second paragraph to particularly and distinctly claim the subject matter that they regard as their invention. The claims as instantly drafted do indeed meet the requirements of 35 USC § 112, since they particularly and distinctly set forth what the Applicants regard as their inventive discovery.

***Interview with Examiner***

The undersigned wishes to thank the Examiner for her courtesy in holding a personal interview at the USPTO on December 11, 2002. Applicants also appreciate the courtesy of Examiner Weilun Lo, who also attended the interview. The Examiner Interview Summary Form resulting from the interview is correct with regard to the general nature of discussions during the interview. However, Applicants wish to reiterate at present that there is no need for an additional figure to be presented in the present application

relating to a second embodiment (see item (2) in claim 1) wherein body-surrounding elastic members are disposed in a center portion of a body-surrounding portion where an absorbent core exists in such a manner that elastic contractibility is not manifested thereby in at least said center portion.

***Claim Rejections Under 35 USC § 112***

Claims 1-5 have been rejected under 35 USC § 112, second paragraph. The basis of the rejection is stated to be that Applicants have failed to particularly point out and distinctly claim the subject matter of the invention.

Applicants have considered the Examiner's comments as set forth at page 2 of the Office Action, and have amended claims in a fashion which is believed to be fully supported and appropriate under the provisions and language of 35 USC § 112, second paragraph. The Examiner is thus respectfully requested to withdraw all outstanding rejections under 35 USC § 112, second paragraph.

***Claim Rejections Under 35 USC § 102/§ 103***

Claims 1-3 have been rejected under 35 USC § 102(b) as being anticipated by Rosch et al. (US 5,876,394). Further, claims 1 and 4 have been rejected under 35 USC § 102(b) as being anticipated by Yamamoto et al. (US 5,749,865). Still further, claim 5 has been rejected under 35 USC § 103(a) as being unpatentable over Rosch et

al. (US '394) further in view of Iskra (US 5,021,050). Reconsideration and withdrawal of each of these rejections are respectfully requested based upon the following considerations.

The Present Invention and Its Advantages

The present invention provides for an advantageous diaper, which possesses unexpectedly good properties relating to fitability and sustained fit, as evidenced by properties such as fit, ease of putting on a wearer and resistance to sagging (see Table 1 at page 13 of the specification).

The advantages possessed by the claimed diapers result in part from Applicants' use of a plurality of body-surrounding elastic members that are disposed at side portions of the diaper, wherein the body-surrounding elastic members are not disposed in at least a center portion of a body-surrounding portion wherein an absorbent core exists, or alternatively, if said body surrounding elastic members are disposed in a center portion of a body-surrounding portion where said absorbent core exists, they are utilized in such a manner that elastic contractibility is not manifested thereby in at least the center portion of the diaper (see claim 1).

By utilizing such construction, fitability of the diaper is greatly improved, and at the same time bunching of the absorbent core is avoided, which produces other advantageous effects as discussed in the application.

Distinctions Over the Cited ArtRosch et al. (US 5,876,394)

In applying the cited Rosch et al. reference against Applicants' claims, the Examiner (and USPTO) has taken the position that side panels 26 and 28 of the reference correspond to Applicants' "body-surrounding elastic members". Such a contention is not sustainable. For example, at column 4, lines 64 to column 5, line 13 of the cited Rosch et al. reference, it is made clear that the side panels 26 and 28 thereof may or may not have elastic characteristics. This is quite different from the present invention.

Apart from the above consideration, it is noted that claim 1 as instantly amended positively recites that a "plurality of body-surrounding elastic members are fixedly disposed at least at each of said side portions of said diaper." This is also different from the cited reference, since it at best only provides for one element 26 or 28 at the different sides thereof (see Figure 2).

Accordingly, it is submitted that the cited Rosch et al. reference is incapable of anticipating the instant invention as claimed, and further that no motivation is provided by the Rosch et al. reference which would allow one of ordinary skill in the art to arrive at the instant invention as claimed.

Yamamoto et al. (US 5,749,865)

Upon reviewing the cited Yamamoto et al. patent, and particularly Figure 1 thereof, it is seen that stretchable regions exist in center portions of the absorbent core 12, as evidenced by stretchable regions 28a, 28b and 28c in Figure 1. This is not a construction of the present invention.

In support of this contention, the Examiner need only review claim 1 of the present application and provisos of (1) and (2) set forth therein.

Accordingly, it is clear that the cited Yamamoto et al. reference does not anticipate the claimed invention, and further that its teachings are not capable of supporting an obviousness rejection of the present claims, since they provide no motivation to arrive at a shorts type diaper as instantly claimed.

Further to the above, it is noted that the present inventive diapers, by avoiding the use of large stretchable regions like those taught by Yamamoto et al., avoids problems such as sagging and poor fit. Again, the Examiner's attention is directed to Table 1 in the present application, wherein comparative test results are set forth for Examples 1-4 of the application and Comparative Examples 1-2 (see page 13 of the present specification).

Iskra (US 5,021,050)

The Examiner has relied upon the Iskra reference as a secondary reference to support an obviousness rejection of Applicants' claim 5. The Iskra reference at best only teaches a diaper having an absorbent core, which itself has a Taber stiffness. Accordingly, because the Iskra reference being relied upon does not cure the deficiencies of the primary reference of Rosch et al., it follows that the combined references are not capable of rendering obvious Applicants' claimed invention. This is because even upon combining the cited references' teachings, there is provided no motivation to arrive at a construction as instantly claimed.

CONCLUSION

Based upon the amendments and remarks presented herein, the Examiner is respectfully requested to issue a Notice of Allowance, clearly indicating that each of Applicants' pending claims are allowable at present.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact John W. Bailey (Reg. No. 32,881) at the telephone number below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

Attached hereto is a marked-up version of the changes made to the application by this Amendment.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

BIRCH, STEWART, KOLASCH & BIRCH, LLP

By 

John W. Bailey, #32,881

P.O. Box 747  
Falls Church, VA 22040-0747  
(703) 205-8000

JWB/end  
0445-0302P

Attachment: Version with Markings to Show Changes Made

(Rev. 02/20/02)

VERSION WITH MARKINGS TO SHOW CHANGES MADE

IN THE CLAIMS:

The claims have been amended as follows:

1. (Amended) A shorts type disposable diaper comprising a liquid-permeable topsheet, a liquid-impermeable anti-leakage sheet and a liquid-retentive absorbent core, a body-surrounding portion which is located between a waist opening portion and a leg opening portion, with said body-surrounding portion containing side portions, and [having] a plurality of body-surrounding elastic members provided at the body-surrounding portion [which is located between a waist opening portion and a leg opening portion], with said body-surrounding elastic members extending in [the] a circumferential width direction of the diaper, wherein:

said plurality of body-surrounding elastic members are fixedly disposed [in] at least at each of said side portions of said diaper, and which body-surrounding elastic members extend in the circumferential width direction of the diaper and outward in a stretched state from longitudinal side edges of said absorbent core, [in a stretched state so as to] and thereby manifest elastic contractibility at said side portions of the diaper, provided that:

(1) the body-surrounding elastic members[, but] are not disposed in at least [the] a center [of the] portion of said body-surrounding portion where said absorbent core exists, or alternatively,

(2) said body-surrounding elastic members are disposed in [the] a center portion of said body-surrounding portion where said absorbent core exists in such a manner that elastic contractibility [does] is not manifested thereby in at least said center portion of said diaper;

[the] wherein a ratio of [the] a width of said absorbent core to a width of said diaper at [the position which corresponds to the] a position where said body-surrounding elastic members are disposed [to the width of said diaper] is 30 to 60%, when the diaper is laid on a flat surface, and

[the] wherein a ratio of [the] a width of [parts in which] portions of said diaper that contain therein said elastic members in a stretched state, with [that manifest] elastic contractibility being manifested thereby, to the width of said diaper where elastic members are disposed is 40 to 95%, when the diaper is laid on a flat surface.

2. (Amended) The shorts type disposable diaper according to claim 1, wherein said body-surrounding elastic members are disposed between an outer sheet which constitutes [the] an outermost surface of said diaper and said anti-leakage sheet [or any other sheet].

3. (Amended) The shorts type disposable diaper according to claim 2, wherein:

said diaper comprises an absorbent body [having] containing said topsheet, said anti-leakage sheet and said absorbent core and an exterior member [having said] containing an outer sheet,

said exterior member [is] being disposed on [the] a side of said absorbent body having said anti-leakage sheet [side of said absorbent body], and said absorbent body and said exterior member are fixed together by partial bonding.

4. (Amended) The shorts type disposable diaper according to claim 1, wherein:

an elastic member which extends in the circumferential width direction of the diaper is fixedly disposed in the waist opening portion, and

[the] a 30% elongation stress of said waist opening portion is greater than [the] a 30% elongation stress of [the portion of] said body-surrounding portion where said body-surrounding elastic members are disposed.